In the High Court of Judicature at Madras

Dated: 08.01.2007

Coram:

The Honourable Mr.Justice S.J.MUKHOPADHAYA

and

The Honourable Mr.Justice R.SUDHAKAR

Writ Appeal No.3642 of 2004

M.Kannan ..Appellant

..vs..

1. Management of FAL Industries
   Ltd., 52, SIPCOT Industrial
   Complex, Housur-635 126,
   rep.by its Personnel Manager.

2. The Presiding Officer,
   Labour Court, Salem. ..Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.M.P.No.14534 of 2004 in W.P.No.8900 of 2004 dated 17.06.2004.

[WPMP.No.14534/04 presented to direct the writ Petitioner to pay the petitioner the last drawn wages payable under Section 17B of the ID.Act every month from the date of Writ Petition,
WP.No.8900/04 presented under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the first respondent in ID.No.1/2000 and quash its award dated 6.11.2003].

For Appellant : Mr.V.Ajoy Khose

For 1st Respondent : M/s.T.S.Gopalan & Co.,

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JUDGMENT

(Judgment of the Court was delivered by S.J.MUKHOPADHAYA,J.,)

The Labour Court, Salem, by the impugned award dated 06.11.2003 passed in I.D.No.1 of 2000 while held that the order of dismissal as illegal, directed to reinstate the appellant with continuity of service without backwages, but with other attendant benefits. The award was challenged by the first respondent management of FAL Industries Limited in W.P.No.8900

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of 2004 and is pending consideration before this Court. In the meantime, the award having not implemented, the appellant- workman filed a petition under Section 17-B of Industrial Disputes Act, for wages, which has been rejected by the learned single Judge, by the impugned order dated 17.06.2004, which reads as follows;

> "2. The reason given by the Labour Court for granting the award in favour of the petitioner/workman of reinstatement cannot be regarded as a reason for granting the award. Hence, I am of the view that the correctness of the same has to be decided only in the main writ petition.
>
> 3. In view of the peculiar facts and circumstances of the case, this court is not able to pass the usual order under Section 17-B of the Industrial Disputes Act. As the award, prima facie, is not in accordance with the established principle of law, interim stay granted in WPMP.No.10408 of 2004 also cannot be vacated and the same is made absolute.
>
> Accordingly, both WPMP.No.14534 of 2004 and WVMP.No.789 of 2004 are dismissed".

2. The question relating to legality and propriety of the Award is under challenge in the writ petition, which can be looked into at the time of final hearing of the said case. Under Section 17-B of the said Act, provisions have been made for payment of full wages to workman pending proceeding against such award in a High court or Supreme Court. Such provision being mandatory in nature, for determination of such claim, it was not open to the learned single Judge to find out whether a prima facie case was made out against the award or not. Even if a prima facie case is made out against an award, the management is liable to pay full wages to the workman, if ordered to be reinstated, in terms of Section 17-B of the said Act. It can be refused only if it is shown that the workman was in gainful employment in some other organization.

3. We, accordingly, set aside the impugned order dated 17.06.2004 passed in W.P.M.P.No.14534 of 2004 in W.P.No.8900 of 2004 with a further direction to the first respondent management to pay the appellant-workman full wages in terms of Section 17-B of the said Act from the date of filing of the writ petition. The current wages should be paid by 31st January 2007 and the arrears should be paid by 28th February 2007. Liberty is also given to the parties to move an application for early hearing of the writ petition, after compliance of the order.

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Writ appeal is allowed with the aforesaid observation and direction. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Presiding Officer,
Labour Court,
Salem.

2. The Section Officer,
Writ Section,
High Court, Madras.

+ 1 CC to Mr. D.Hariparanthaman, Advocate SR NO 1687/07

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